

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOSEPH JOHN CURRY,

9 Petitioner,

10 v.

11 ELDON VAIL,

12 Respondent.
13

Case No. C09-5144BHS

ORDER ADOPTING
REPORT AND
RECOMMENDATION AND
GRANTING PETITIONER'S
MOTION TO DISMISS
UNEXHAUSTED CLAIMS

14 This matter comes before the Court on the Report and Recommendation of the
15 Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 17) and Petitioner's
16 Motion to Dismiss Unexhausted Claims (Dkt. 18). The Court having considered the Report
17 and Recommendation, Petitioner's motion, the remaining record, and no objections having
18 been filed by Respondent with respect to either motion, does hereby adopt the report and
19 recommendation and grant Petitioner's Motion to Dismiss Unexhausted Claims.

20 On August 4, 2009, Judge Creatura recommended the following action be taken by
21 the Court in this matter:

22 Based on the foregoing discussion, the Court should give petitioner thirty days
23 to either dismiss his unexhausted claims and proceed only on claim 2(b), or
24 dismiss the entire petition without prejudice and return to state court. If
25 petitioner takes no action, the entire petition should be dismissed without
26 prejudice.
27

1 Dkt. 17 at 9. On September 2, 2009, consistent with Judge Creatura's report and
2 recommendation, Petitioner filed a motion to dismiss all unexhausted claims to permit going
3 forward with his "2(b)" claim. Dkt. 18 at 1.

4 The Court agrees with the report and recommendation and finds no reason to deny
5 Petitioner's motion to dismiss unexhausted claims and proceed with claim "2(b)." Therefore,
6 it is hereby **ORDERED** that

7 (1) The Court **ADOPTS** the Report and Recommendation; and

8 (2) This Peitioner's motion to dismiss unexhausted claims is **GRANTED**.

9 DATED this 27th day of October, 2009.

10
11 

12 BENJAMIN H. SETTLE
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27